IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO.2289 OF 2005
IN
CRIMINAL APPEAL NO.365 OF 2005

Shivaji Maruti Garadkar @ Shiva Garadkar .. Appellant

v/s.

The State of Maharashtra .. Respondent

Mr.Sanjeev P. Kadam for the appellant.

Ms.P.H.Kantharia, Addl. Public Prosecutor for the State.

CORAM : SMT.RANJANA DESAI AND ANOOP V. MOHTA, JJ.

DATED : 17th October, 2005.

P.C.

The appellant has been convicted for the offence under section 302 I.P.C. and sentenced to life imprisonment. His appeal has been admitted.

Today, we are considering the bail application.

2. We have heard the learned counsel appearing for the appellant at great length. He took us through some parts of the evidence. He contended that P.W.2 Kamina is the only eye witness. However, she has not supported the prosecution case. He has submitted that P.W.2 Kamina is mother of the deceased. According to the prosecution, the deceased made a dying declaration before her that the accused had poured kerosene on her and set her on fire. However, P.W.2 Kamina has not supported

the prosecution. The learned counsel urged that Kamina is the mother of the deceased. She would not leave out the assailant. The fact that she has not supported the prosecution speaks volumes and on that ground itself, the appellant should be released on bail. The learned counsel then urged that the deceased died 40 days after the incident in question. She had only 40% burn injuries. The medical evidence says that deceased died of septicemia. Therefore, at the most a case under section 304 part I or II will be made out. The appellant can certainly not be convicted for the offence under section 302. The learned counsel further urged that it has come in the evidence of the doctor that the deceased was not in a proper condition to make statement. The learned counsel further urged that there are discrepancies in the dying declarations. He, therefore, stated that this is a fit case where the appellant should be released on bail.

3. We are not inclined to release the appellant on bail at this stage. We find that Special Executive Magistrate has recorded the dying declaration of the deceased immediately after the incident occurred viz. on 31.10.2002. P.W.4 Dr.Mahesh Deshpande has stated that on 31.10.2002 deceased told him that the appellant poured kerosene on her and set her on fire. P.W.10-A.P.I. Mrs.Jadhav has stated that on 31.10.2002, the deceased told her that the appellant poured kerosene on her and set

her on fire. A.P.I. Mrs. Jadhav has recorded the said dying declaration. Dr.Jhala, one of the doctors who has examined the deceased has stated that on 31.10.2002, the deceased told him that the appellant poured kerosene on her and set her on fire. The S.E.O. and the doctors fall in the category of independent witnesses. There is no reason for them to state any falsehood. It is true that Kamina has not supported the prosecution case. We do not want to comment on that. In view of the dying declaration recorded immediately after the incident by the Special Executive Magistrate and in view of the history given by the deceased to the doctors who are independent witnesses, we are not inclined to give bail to appellant at this stage.

4. We are informed that the appellant was not released on bail in the trial court . He is in custody for three years and he is not keeping good health. Needless to say that the appellant can always make another bail application on that ground and the court will take into consideration the said fact and pass appropriate orders. Application disposed of.

(SMT.RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)